



"Neil P. Reiff"
 <reiff@sandlerreiff.com>
 01/14/2011 05:12 PM

To
 cc
 bcc

Subject FW: Emailing: MUR 6411 Blue America

I apologize, I thought I had sent this last week.

Neil P. Reiff

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SANDLER, REIFF & YOUNG, P.C.

January 6, 2011

Jeff S. Jordan, Esq.
Office of the General Counsel
Federal Election Commission
999 E. Street, NW
Washington, DC 20463

Re: MUR 6411

Dear Mr. Jordan:

The undersigned represents Blue American PAC Independent Expenditure Committee and Hawie Klein, its Treasurer. By this letter, my client responds to a complaint filed by Let Freedom Ring, Inc. In the complaint, Let Freedom Ring alleges that respondents coordinated activity in violation of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. § 431 *et seq.*) ("the Act").

This vague and unsubstantiated complaint should immediately be dismissed by the Commission. The complaint asserts a misguided theory of coordination based on reports citing unnamed aides and fails to show any level of "request or suggestion" to meet the conduct prong of the Commission's coordination regulations at 11 C.F.R. § 109.21(d). The allegations consist of vague and general statements made by Members of Congress, as well as unnamed aides speaking of the lack of support from unnamed independent groups and urging those groups to support unnamed candidates. These Members or aides cannot be considered agents of any candidate, particularly since there are no benefiting candidates specified. In short, the allegations in the complaint fail the coordination test, namely that an expenditure was made at the "request or suggestion" of a candidate or his agent. 11 C.F.R. § 109.21(d)(1).

A minimum threshold requirement for the Commission to consider such a complaint requires the complainant to allege not only a violation of a provision of the Act, but also to provide underlying facts sufficient to support the allegations. The complaint "should contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction." 11 C.F.R. § 111.4(d)(3). This complaint, however, through its reliance on unnamed aides and general statements, does not provide the requisite threshold facts describing a violation of statute or regulation necessary to justify the initiation of a Commission investigation. See MUR 4960 (Hillary Clinton Exploratory Committee, Inc.)

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FACTS AND ANALYSIS

The complaint alleges that various Democratic Members of Congress and unnamed aides demanded that outside organizations increase their spending on behalf of democratic members of Congress. Citing articles from Roll Call and Politico, the complaint alleges that Nancy Pelosi discussed the lack of independent spending on behalf of Democrats at closed door meetings with House Democrats. The articles also quote Democratic Caucus Chairman John Larson, who acknowledged the lack of spending on behalf of Democrats and the huge amount of money being spent by GOP-affiliated interest groups. The complaint does not allege, and there has not been, any communications by our client with any federal candidate or political party officer, or with any of their agents or employees regarding any independent expenditures undertaken by the committee. Attached as Exhibit A, please find a declaration from Howard Klein, Treasurer of Blue America PAC Independent Expenditure Committee, and a sister organization, Blue America PAC. Mr. Klein was the sole and ultimate decision-maker as to which elections both PACs would disseminate independent expenditures. Mr. Klein's declaration confirms that he did not have any direct communication with Nancy Pelosi, John Larson or their agents, or any other candidate or agents, or any officer of a political party or their officers or agents regarding any independent expenditures undertaken by the committee. In addition, Mr. Klein states that he was not aware of, or otherwise influenced by any public statements attributed to Ms. Pelosi, Mr. Larson or any other member of Congress regarding independent spending by liberal political groups in the 2010 elections.

Thus, the allegations do not meet the conduct prongs set forth in the Commission's regulations regarding coordinated communications. The Commission, in its Explanation and Justification to its coordination regulations, made clear that general public requests or suggestions made to the public do not fulfill the conduct prong:

The "request or suggestion" conduct standard in paragraph (d)(1) is intended to cover requests or suggestions made to a select audience, but not those offered to the public generally. For example, a request that is posted on a web page that is available to the general public is a request to the general public and does not trigger the conduct standard in paragraph (d)(1), but a request posted through an internet service or sent via electronic mail directly to a discrete group of recipients constitutes a request to a select audience and thereby satisfies the conduct standard in paragraph (d)(1). Similarly, a request in a public campaign speech or a newspaper advertisement is a request to the general public and is not covered, but a request during a speech to an audience at an invitation-only dinner or during a membership organization function is a request to a select audience and thereby satisfies the conduct standard in paragraph (d)(1).

Explanation and Justification, Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 432 (January 3, 2003).

In its complaint, complainant alleges no private or otherwise non-public conduct by the Democratic leadership. Of course, no such conduct occurred. Even, assuming *arguendo*, that such a private conversation did occur, such conversations would not meet the conduct prong of

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the Commission's regulations because the Majority Leader Pelosi, nor the other Members of the Democratic leadership, were not acting as "agents" of the candidates for which the respondent referred in their communications:

Where Candidate A requests or suggests that a third party pay for an ad expressly advocating the election of Candidate B, and the third party publishes a communication with no reference to Candidate A, no coordination will result between Candidate B and the third party payor."

Explanation and Justification, Coordinated and Independent Expenditures, 68 Fed. Reg. at 431.

In the complaint, complainant alleges that Nancy Pelosi and the Democratic Caucus discussed the lack of third party expenditures. The complaint does not allege, and it is our understanding that there were no third party groups present at any the meetings referenced in the complaint. Further, the complaint fails to allege that any specific independent expenditure allegedly requested by Speaker Pelosi, Chairman Larson or any of the unnamed aides were made a request or suggestion on behalf of any particular candidate, authorized committees or any agent thereof.

In addition to the unequivocal language in the Commission's Explanation and Justification to its coordination regulations, the Commission made clear in MUR 5546 (Progress for America Voter Fund) that vague and general public statements do not meet the request or suggestion standard. That MUR involved a joint press release from Bush-Cheney 2004 and the RNC stating that conservative 527 groups can raise and spend money freely on a specific federal candidate, George Bush. The complaint alleged that the press release was a clear signal to make expenditures, however, the Commission's General Counsel determined that a mere public statement by a party committee was not sufficient to meet the conduct prong of the Commission's regulations unless it was part of a series of communications (presumably direct communications between persons covered by the Commission's regulation). MUR 5546, First General Counsel's Report, p. 12.

In this matter, alleged statements were made in private discussions without the presence of third party groups and were published not through press releases, but through newspaper articles. The published statements are even more general than the press release in MUR 5546, since they don't even specify the candidates on whose behalf they are allegedly making the request or suggestion.

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Based upon the above, the complaint does not allege any facts that, if true, could lead to a violation of the Federal Election Campaign Act. Therefore, the Commission must immediately dismiss this baseless and frivolous complaint.

Sincerely,

A handwritten signature in black ink, appearing to read 'NR', is written over the word 'Sincerely,'.

Neil Reiff
Counsel to Blue American PAC
Independent Expenditure Committee, and
Howie Klein, as Treasurer.

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